
OLR Bill Analysis

sHB 6511

AN ACT CONCERNING THE RECOMMENDATIONS OF THE CONNECTICUT SENTENCING COMMISSION REGARDING THE ENHANCED PENALTY FOR THE SALE OR POSSESSION OF DRUGS NEAR SCHOOLS, DAY CARE CENTERS AND PUBLIC HOUSING PROJECTS.

SUMMARY:

This bill reduces the scope of the laws that enhance the penalties for illegal drug activities near schools, day care centers, and public housing projects (i.e., drug-free zones). It reduces the size of the zones from 1,500 to 200 feet and specifies that they are measured from the perimeter of the property.

The bill also provides that for the enhanced penalty to apply for some of these crimes, the offender must have committed the crime with the intent to do so in a specific location which the trier of fact (i.e., the jury or judge) determines is within such a zone. This applies to violations involving drug paraphernalia or illegal drug sales and related crimes (such as possession with intent to sell), but not to illegal possession. To the extent this provision applies to illegal drug sales and related crimes, it codifies case law (see BACKGROUND).

Currently, these laws generally require a mandatory sentence, in addition and consecutive to any prison term imposed for the underlying crime, as follows:

1. one year for drug paraphernalia possession and specified other paraphernalia-related crimes within 1,500 feet of property comprising a public or private elementary or secondary school when the defendant is not enrolled as a student there;
2. three years for selling, distributing, manufacturing, or transporting or possessing with intent to sell controlled

substances within 1,500 feet of property comprising a (a) licensed child day care center identified by a conspicuous sign, (b) public or private elementary or secondary school, or (c) public housing project; and

3. two years for possessing illegal drugs within 1,500 feet of property comprising a (a) licensed child day care center identified by a conspicuous sign or (b) public or private elementary or secondary school when the defendant is not enrolled as a student there.

EFFECTIVE DATE: October 1, 2013

BACKGROUND

Exceptions to Enhanced Penalties; Departing From a Mandatory Minimum

The enhanced penalties described above do not apply to (1) drug paraphernalia-related actions involving less than one-half ounce of marijuana or (2) possessing less than one-half ounce of marijuana. PA 11-71 removed the criminal penalties for such actions and generally made them punishable by fines only.

Also, judges can impose less than the law's mandatory minimum sentence under the laws described above when no one was hurt during the crime and the defendant (1) did not use or attempt or threaten to use physical force; (2) was unarmed; and (3) did not use, threaten to use, or suggest that he or she had a deadly weapon (such as a gun or knife) or other instrument that could cause death or serious injury. Defendants must show good cause and can invoke these provisions only once. Judges must state at sentencing hearings their reasons for (1) imposing the sentence and (2) departing from the mandatory minimum (CGS § 21a-283a).

Penalties for Certain Illegal Drug Offenses

By law, the penalty for using or possessing with intent to use drug paraphernalia (other than in relation to less than one-half ounce of marijuana) is a class C misdemeanor, punishable by up to three

months in prison, a fine of up to \$500, or both. Delivering drug paraphernalia or possessing or manufacturing it with intent to deliver (except involving less than one-half ounce of marijuana) is a class A misdemeanor punishable by up to one year in prison, a fine of up to \$2,000, or both (CGS § 21a-267).

Selling, manufacturing, distributing, or possessing or transporting with intent to sell a hallucinogen (but not marijuana) or narcotic is punishable (1) for a first offense, by up to 15 years in prison, a fine of up to \$50,000, or both; (2) for a second offense, up to 30 years, a fine of up to \$100,000, or both; and (3) for subsequent offenses, up to 30 years, a fine of up to \$250,000, or both. For marijuana and other controlled substances, the penalty is (1) for a first offense, up to seven years in prison, a fine of up to \$25,000, or both and (2) for a subsequent offense, up to 15 years, a fine of up to \$100,000, or both. As an alternative, the court may impose up to a three-year indeterminate prison term with conditional release by the correction commissioner (CGS § 21a-277).

By law, a non-drug-dependent person selling, manufacturing, distributing, or possessing or transporting with intent to sell at least one ounce of heroin or methadone, one-half ounce of cocaine or crack, or five milligrams of LSD is subject to five to 20 years in prison to life. For narcotics, hallucinogens, one kilogram or more of marijuana, or amphetamines, the penalty is (1) for a first offense, five to 20 years in prison and (2) for a subsequent offense, 10 to 25 years. There is an exception to the mandatory minimum sentence if the offender is younger than age 18 or had a significantly impaired mental capacity (CGS § 21a-278).

By law, possession of narcotics is punishable (1) for a first offense, by up to seven years in prison, a fine of up to \$50,000, or both; (2) for a second offense, up to 15 years, a fine of up to \$100,000, or both; and (3) for subsequent offenses, up to 25 years, a fine of up to \$250,000, or both. Possession of a hallucinogen or four or more ounces of marijuana is punishable (1) for a first offense, by up to five years in prison, a fine of up to \$2,000, or both and (2) for a subsequent offense, up to 10 years, a fine of up to \$5,000, or both. Possession of other controlled

substances or one-half ounce or more but less than four ounces of marijuana is punishable (1) for a first offense, by up to one year in prison, a fine of up to \$1,000, or both and (2) for a subsequent offense, up to five years, a fine of up to \$3,000, or both. For these possession crimes with maximum sentences of five years or longer, the court may instead impose up to a three-year indeterminate prison term with conditional release by the correction commissioner (CGS § 21a-279).

Related Cases

In a series of cases, the Connecticut Supreme Court has interpreted the statute setting enhanced penalties for drug sales and related crimes in drug-free zones as requiring the state to prove that the defendant intended to sell drugs at a specific location, which location is within a drug-free zone (see *State v. Denby*, 235 Conn. 477 (1995); *State v. Hedge*, 297 Conn. 621 (2010); *State v. Lewis*, 303 Conn. 760 (2012)). The state does not have to prove that the defendant knew that the location was within such a zone.

For example, in *Lewis*, the defendant was charged with four drug crimes, including possession of narcotics with intent to sell within 1,500 feet of a school. The court's majority upheld the Appellate Court's determination that there was insufficient evidence that the defendant intended to sell drugs at the place where he was arrested.

The defendant was arrested a block from his home, with a large amount of drugs and cash on his person. He was stopped by police because he resembled a suspect in another crime, not because the police suspected an impending drug sale. The court concluded that while the evidence was sufficient to support the jury's verdict that the defendant intended to sell drugs somewhere, it was insufficient to establish that he intended to sell drugs where he was arrested (a location within a drug-free school zone).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 22 Nay 19 (04/12/2013)